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8 **DISTRICT COURT  
DISTRICT OF NEVADA**

9 MITCHELL E. HARPER,

10 Plaintiff,

11 vs.

12 NEVADA PROPERTY 1, LLC dba  
COSMOPOLITAN OF LAS VEGAS,

13 Defendants.  
14

**CASE NO.: 2:19-cv-02069-GMN-VCF**

**STIPULATION AND ORDER TO  
STAY DISCOVERY PENDING  
THE COURT'S RULING ON  
DEFENDANT'S MOTION TO  
DISMISS (ECF NO. 9)**

**(FIRST REQUEST)**

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16 Plaintiff MITCHELL E. HARPER and Defendant NEVADA PROPERTY 1, LLC, by  
17 and through their counsel of record, stipulate to stay discovery pending the Court's ruling on  
18 Defendant's Motion to Dismiss (ECF No. 9), which seeks dismissal of all claims in Plaintiff's  
19 Complaint.

20 In assessing a request to stay discovery, the Court decides whether it is necessary to  
21 speed the parties along in discovery or whether it is appropriate to delay discovery and spare  
22 the parties the associated expense. *Tradebay, LLC v. Ebay, Inc.*, 278 F.R.D. 597, 603 (D. Nev.  
23 2011). To make this assessment, the Court takes a "preliminary peek" at the merits of the  
24 purportedly dispositive motion, though, importantly, this "preliminary peek" does not prejudice

1 the outcome of the motion, it merely evaluates whether an order staying discovery is warranted.  
2 *Id.* The Motion to Dismiss in this instant action is the type warranting a stay of discovery as  
3 Defendant has sought to dismiss five out of the six causes of action asserted by Plaintiff.  
4 Moreover, no discovery is required to make a determination on the Motion to Dismiss and the  
5 Motion to Dismiss raises threshold legal issues (*e.g.*, statute of limitations, failure to exhaust  
6 administrative remedies, and preemption). Accordingly, requiring the parties to conduct  
7 discovery on claims that may be dismissed and may not be curable by amendment would cause  
8 an unnecessary expense on the parties and potentially log the Court's docket with unnecessary  
9 discovery disputes on these claims. Additionally, because Defendant moved to dismiss the  
10 claims, Plaintiff has not been apprised of which factual allegations Defendant intends to admit,  
11 and which Defendant intends to deny. Nor has Plaintiff been apprised of the defenses  
12 Defendant intends to assert. Plaintiff believes this would limit his ability to conduct full  
13 discovery while the Motion to Dismiss is pending. Plaintiff disputes the arguments made in  
14 Defendant's Motion to Dismiss but agrees that the motion is of the type warranting a stay of  
15 discovery.

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1 In light of the foregoing, the parties request a stay of discovery until a decision  
2 on Defendant's Motion to Dismiss is issued. The parties further stipulate and agree to  
3 submit their Proposed Discovery Plan and Scheduling Order within ten (10) calendar  
4 days of a decision on Defendant's Motion to Dismiss.

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6 Dated this 12<sup>th</sup> day of August, 2020.

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8 **HKM EMPLOYMENT**  
9 **ATTORNEYS LLP**

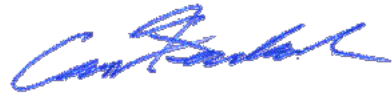
10 /s/ Jenny L. Foley  
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18 **ORDER**

19 IT IS SO ORDERED:

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21 UNITED STATES MAGISTRATE JUDGE

22 DATED: 8-12-2020